

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

In re: HERITAGE DISPOSAL AND STORAGE, LLC
Debtor.

Case No. BK 19-40297
Chapter 11

MOTION TO ASSUME EXECUTORY CONTRACT PURSUANT TO
11 USC §365

COMES NOW the Debtor and requests that this Court enter an order to allow it to assume an executory contract involving a core service of Debtor's business with the Department of Defense of the United States. In support thereof, Debtor states the following:

1. Debtors filed for protection under the United States Bankruptcy Code on February 27, 2019.
2. This matter is a core proceeding under 28 U.S.C. §157(b)(2)(M).
3. Debtor is in the business of the storing, recycling and disposal of hazardous materials.
4. On September 19, 2015, Debtor entered into a contract with the Department of Defense for the disposal of Hexachloroethane (HC), smoke canisters and smoke pots.
5. The contract was subsequently amended/modified on December 27, 2016, October 24, 2017 and again on July 18, 2018.
6. Attached hereto are copies of the original contract and all amendments/modifications, with required redactions as to pricing and unit quantities per requirements by the United States government.
7. The contract is for a fixed sum, dependent upon Debtor's retention and disposal of hazardous materials and it has a period for performance of 24 months.
8. Debtor was not on the date of filing this case, and is not in default of the contract's terms.
9. If completed, the base contract would realize a total of \$6,671,295.76 to Debtor.
10. The contract contains two option periods based on successful performance by Debtor, which concerns the same services as the base contract and would realize an even greater revenue stream:
 - Option 1: approx. \$6,904,790.33
 - Option 2: approx. \$7,146,457.99

11. The last billable month for Debtor to receive any funds for the base contract or the options is June, 2021.
12. Debtor has a tested and proven proprietary process that will enable it to fulfill this contract.
13. Debtor must build a facility to fulfill the contract and Debtor is currently in the process of obtaining Debtor in Possession financing to build said facility.
14. Debtor inadvertently omitted listing this executory contract on Schedule G, however, it has since amended Schedule G to fully disclose the existence of this executory contract on April 16, 2019.
15. Debtor has previously informed its contact that indeed it filed bankruptcy, however, Debtor has also sent a copy of the Notice of Commencement to the contacts listed on the attached executory contract and has filed a certificate of service showing the same.
16. Assumption of this contract is required for Debtor to be able to reorganize under in this case.

WHEREFORE, Debtor requeststhis Court enter an Order allowing Debtor to Assume the executory contract detailed herein and attached to this motion with the Department of Defense and it's contractors and assigns pursuant to the terms of the attached contract and its amendment/modifications.

Heritage Disposal and Storage, LLC,
Debtor in Possession
By /s/ John A. Lentz
John A. Lentz, #24420
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Attorney for the Debtor

NOTICE OF RESISTANCE DATE

YOU AND EACH OF YOU ARE HEREBY NOTIFIED, pursuant to Neb. R. Bankr. P. 9014, that on April 18, 2019, the undersigned filed the foregoing in the above-entitled case in the office of the Clerk of the U.S. Bankruptcy Court. Any resistance or request for hearing on said motion must be filed and served by **May 9, 2019**. Pursuant to Local Rule 9013, any resistance or objection to said motion shall set forth the specific factual and legal basis for the objection/resistance and conclude with a particular request for relief. If the resistance period expires without the filing of any resistance or request for hearing, the Court will consider entering an order granting the relief sought without further hearing. If a timely resistance or request for hearing is filed and served, the Clerk will schedule a hearing.

CERTIFICATE OF SERVICE

I do hereby certify that on the 18th day of April, 2019, I caused filing of the foregoing, including all attachments with the Clerk of th Bankruptcy Court using the CM/ECF system, and further certify that on the same date I mailed by United States Postal Service, postage prepaid, the document to the following non-CM/ECF participants, named on the current matrix:

All such Persons.

I further certify that I relied on the CM/ECF system to send notification of such filing to the Office of the United States Trustee and all other parties registered.

/s/ John A. Lentz
John A. Lentz